

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re: DEEP MARINE HOLDINGS, INC.	§	CASE NO.: 09-39313
et al	§	Jointly administered
	§	Chapter 11
Debtors	§	

**BEAUTY ELITE PROPERTIES, L.P.'S MOTION TO COMPEL ASSUMPTION OR  
REJECTION OF UNEXPIRED COMMERCIAL PROPERTY LEASE AND TO  
COMPEL IMMEDIATE PERFORMANCE OF THE LEASE BY DEEP MARINE  
TECHNOLOGY, INC.**

TO THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE:

Beauty Elite Properties, L.P.<sup>1</sup> asks the court for an order compelling Deep Technology, Inc.<sup>2</sup> to assume or reject an unexpired commercial property lease.

1. Beauty Elite and DMT are parties to an unexpired lease contract whereby DMT leased from Beauty Elite commercial real estate at 20411 Imperial Valley Road, Houston, Texas 77073.<sup>3</sup> DMT promised to pay monthly rent, beginning in July 1, 2008 and ending April 30, 2013.<sup>4</sup> DMT's rent plus CAM is currently \$47,698.48 per month.

2. DMT defaulted on the lease because it did not pay Beauty Elite the rent due December 1, 2009, covering the December 2009 period. Despite this, DMT continues to use the premises as its primary facility.<sup>5</sup> As of the filing date of this bankruptcy, DMT owes \$47,698.48 for December rent.

---

<sup>1</sup> "Beauty Elite."

<sup>2</sup> "DMT."

<sup>3</sup> Exhibit A.

<sup>4</sup> Ex. A.

<sup>5</sup> Docket Entry #1 at 1.

3. DMT's default entitles Beauty Elite to terminate DMT's right to occupy the premises.<sup>6</sup> DMT's bankruptcy petition automatically stayed any termination efforts.

4. To date, DMT has not assumed or rejected the lease and has not cured its default. DMT has not filed any schedules in this case.

### **Jurisdiction and Venue**

5. This court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408-09. Beauty Elite seeks relief under § 365 of the Bankruptcy Code.

### **Argument**

6. Section 365(d)(2) empowers the court to compel DMT to assume or reject a unexpired lease. The time to assume or reject an unexpired lease is within the court's discretion.<sup>7</sup> Based on the facts and circumstances, the court may set a reasonable period of time for DMT to decide.<sup>8</sup>

7. This lease concerns DMT's primary facility. Shelter being one of the most basic needs, DMT should know by now whether it intends to remain at this location or move. DMT's indecision allows DMT a free ride and holds Beauty Elite hostage because Beauty Elite will be required to extend to DMT \$47,698.48 of new value every month, at no cost and with no assurance of ultimately being paid. Because DMT has not filed any schedules in this case, it is impossible to determine whether Beauty Elite will ever be paid.

8. DMT's indecision also harms Beauty Elite because—if DMT ultimately rejects the lease—Beauty Elite will need to re-market the property. The market for this property is

---

<sup>6</sup> Ex. A.

<sup>7</sup> In re Burger Boys, Inc., 94 F.3d 755, 760 (2nd Cir. 1996).

<sup>8</sup> In re Beker Indus. Corp., 64 B.R. 890, 897 (Bankr. S.D.N.Y. 1986).

specialized and limited, the run-up and preparation to listing the property is considerable, and every day that DMT dithers is a lost opportunity to Beauty Elite.

9. This much is clear: from December 1, 2009 to present, DMT enjoyed the property without paying any rent. Every day, DMT unlocks the doors, turns on the lights, and enjoys the premises—for free. Meanwhile, Beauty Elite is held in limbo, unable to exercise any rights and unable to seek a new, paying tenant.

10. The court should compel DMT to decide whether it will assume or reject the lease. In either event, DMT should also be required to cure its default by paying the December rent, and to provide assurance of future payments under the lease.

For these reasons, Beauty Elite prays that the court compel Deep Marine Technology, Inc. to assume or reject the unexpired lease for 20411 Imperial Valley Road, Houston, Texas 77073, and to compel Deep Marine Technology, Inc.'s immediate cure and performance of the lease, and for any additional legal or equitable relief to which it may show itself justly entitled.

Respectfully submitted,

By: /s/Anderson L. Cao

**ANDERSON L. CAO**

State Bar No. 24031910

Federal ID No. 30284

**McGLINCHEY STAFFORD, PLLC**

1001 McKinney, Suite 1500

Houston, TX 77002

***ATTORNEY FOR MOVANT,  
BEAUTY ELITE PROPERTIES, L.P.***

**OF COUNSEL:**

**JOEL W. MOHRMAN**

State Bar No. 14253500

Federal ID No. 5161

1001 McKinney, Suite 1500

Houston, TX 77002

Telephone: (713) 520-1900

Telefax: (713) 520-1025

**CERTIFICATE OF CONFERENCE**

I conferred with the debtor's counsel regarding the substance of this motion and counsel is opposed.

/s/Anderson L. Cao  
Anderson L. Cao

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was, pursuant to Local Rule 9013(f), mailed U.S. Mail, postage prepaid to all parties on the attached Service List(s) on this the 10th of December 2009.

/s/Anderson L. Cao  
Anderson L. Cao

**DEEP MARINE HOLDINGS, INC.  
CONSOLIDATED SERVICE LIST\***

**DEBTORS**

Deep Marine Holdings, Inc.  
Deep Marine Technology Incorporated  
Deep Marine 1, LLC  
Deep Marine 2, LLC  
Deep Marine 3, LLC  
Deep Marine 4, LLC  
20411 Imperial Valley  
Houston, TX 77073

**DEBTORS' ATTORNEY [PROPOSED]**

Marcy E. Kurtz  
William A. (Trey) Wood, III  
Jason G. Cohen  
Bracewell & Giuliani LLP  
711 Louisiana, Suite 2300  
Houston, TX 77002  
[marcy.kurtz@bgllp.com](mailto:marcy.kurtz@bgllp.com)  
[trey.wood@bgllp.com](mailto:trey.wood@bgllp.com)  
[jason.cohen@bgllp.com](mailto:jason.cohen@bgllp.com)

**UNITED STATES TRUSTEE**

Office of the U.S. Trustee  
Attn: Nancy Holley  
515 Rusk Ave., Suite 3516  
Houston, TX 77002  
[nancy.holley@usdoj.gov](mailto:nancy.holley@usdoj.gov)

**GOVERNMENTAL ENTITIES**

Internal Revenue Service  
300 East 8<sup>th</sup> Street  
STOP 5026 AUS  
Austin, TX 78701

Internal Revenue Service  
PO Box 21126  
Philadelphia PA 19114-1294

U.S. Attorneys Office  
Civil Division  
Southern District of Texas  
PO Box 61129  
Houston, TX 77208

**SECURED CREDITORS \***

GE Capital  
60 Wall Street  
New York, NY 10005

Lawrence Rutkowski  
Seward & Kissel LLP  
One Battery Park Plaza  
New York, NY 10004  
[Rutowski@sewkis.com](mailto:Rutowski@sewkis.com)  
Attorney for GE Capital

PNC Bank NA  
PO Box 94931  
Cleveland, OH 44101

DCC Ventures, LLC  
3960 Howard Hughes Parkway, 5th Floor  
Las Vegas, NV 89169  
[nader@njkhholding.com](mailto:nader@njkhholding.com)

Otto Candies, LLC  
PO Box 25  
Des Allemands LA 70030  
[otto3@ottocandies.com](mailto:otto3@ottocandies.com)

**TOP 30 UNSECURED CREDITORS\***

Aramark Offshore  
1101 Market Street  
Philadelphia, PA 19107  
[Liebler-Patrick@aramark.com](mailto:Liebler-Patrick@aramark.com)

Asamarbunkers c/o Asamar, Inc  
1099 Wall Street West, Suite 138  
Lyndhurst, NJ 07071  
[asamar@asamar.com](mailto:asamar@asamar.com)

B&J Martin, Inc./MARTIN QUAR  
18104 W. Main  
Galliano, LA 70354  
[april@bjmartininc.com](mailto:april@bjmartininc.com)

BNA Marine Services, LLC  
1022 Jackson Road  
Amelia, LA 70340  
[bnamarine@aol.com](mailto:bnamarine@aol.com)

Bollinger Fourchon, LLC  
106 Norman Doucet Dr.  
Golden Meadow, LA 70357  
[KimberlyS@bollingershipyards.com](mailto:KimberlyS@bollingershipyards.com)

Bollinger Texas City  
2201 Dock Rd, Dock 42  
Texas City, TX 77590  
[KimberlyS@bollingershipyards.com](mailto:KimberlyS@bollingershipyards.com)

BP America  
501 Westlake Park Blvd  
WLI Office 24, 108A  
Houston, TX 77079  
[vendorauditprogram@bp.com](mailto:vendorauditprogram@bp.com)

Candies Shipbuilders  
1100 Oak St  
Houma, LA 70363  
[otto3@ottocandies.com](mailto:otto3@ottocandies.com)

CapRock Communications  
Lock Box 8792067  
Dept 2067  
PO Box 122067  
Dallas TX 75312  
[kswidan@caprock.com](mailto:kswidan@caprock.com)

Conrad Shipyard, LLC  
PO Box 790  
Morgan City, LA 70381  
[FANewman@conradindustries.com](mailto:FANewman@conradindustries.com)

Crossmar Incorporated  
1950 A S. Van Ave.  
Houma LA 70363  
[emeadow@thecrossgroup.com](mailto:emeadow@thecrossgroup.com)

Ertech India  
307 Bezollah Complex  
Sion Trombay Rd.  
Chembur, Mumbai 400071  
[Ertchin@bsnl.com](mailto:Ertchin@bsnl.com)

ES&H  
1730 Coteau Rd  
Houma LA 70364  
Fax: 985-851-1978

Greenburg Traurig LLP  
300 W 6th St  
Suite 2050  
Austin TX 78701  
[BattagliniK@gtlaw.com](mailto:BattagliniK@gtlaw.com)

Greenwood Marine Management I  
125 Mako Lane  
Morgan City LA 70380  
[dan@greenwoodmarine.com](mailto:dan@greenwoodmarine.com)

GS-HYDRO-US, Inc  
16405 Air Center Blvd  
Suite 400  
Houston TX 77032  
Fax: 713-951-0708

Huisman-Itrec Special Lifting  
Admiral Trompstraat 2  
3115 HH Schiedam, PO Box 150  
3100 AD Schiedam Harbor #561 NL  
[KMulder@huisman-nl.com](mailto:KMulder@huisman-nl.com)

Intermoor, Inc.  
PO Box 1599  
Amelia LA 70340  
[tlacoste@InterMoor.com](mailto:tlacoste@InterMoor.com)

Intrepid Global Ind.  
11931 Wickchester Lane #300  
Houston TX 77043  
[dsorrel@huisman-intrepid.com](mailto:dsorrel@huisman-intrepid.com)

Madcon Corporation  
63374 Old Military Rd  
Pearl River LA 70452  
[jwaguespack@gitbs.com](mailto:jwaguespack@gitbs.com)

McDermott Will & Emory LLP  
227 W Monroe St  
Chicago IL 60606  
[jhwilson@mwe.com](mailto:jhwilson@mwe.com)

Nexans Norway AS  
Postboks 63450  
Etterstad, Oslo, Norway  
N-0605  
[les@carichards.com](mailto:les@carichards.com)

NJK Holding Corporation  
7803 Glenroy Road  
Minneapolis MN 55439  
[nader@njkholding.com](mailto:nader@njkholding.com)

Noble Denton Marine  
14701 St. Mary's Lane  
Suite 425  
Houston TX 77079  
[matt.muddiman@nobledenton.com](mailto:matt.muddiman@nobledenton.com)

NREC Power Systems, Inc.  
5222 Hwy 311  
Houma LA 70360  
[power@nrecps.com](mailto:power@nrecps.com)

Ocean Services, LLC  
2629 NW 54th St, Suite W201  
Seattle WA 98107  
[ronp@stabbertmaritime.com](mailto:ronp@stabbertmaritime.com)

PNC Bank, N.A.  
P.O. Box 828702  
Philadelphia, PA 19182-8702  
[Justin.Sohnlein@nationalcity.com](mailto:Justin.Sohnlein@nationalcity.com)

Seagull Marine/Agility  
115 Canvasback Drive  
St. Rose LA 77087  
[davet@seagullmarine.com](mailto:davet@seagullmarine.com)

The IUC Group  
222 Fordham St  
Bronx NY 10464  
[lgalerie@iucgroup.com](mailto:lgalerie@iucgroup.com)

UTEC Survey Inc.  
10801 Hammerly Blvd.  
Suite 212  
Houston TX 77043  
[dave.ross@utecsury.com](mailto:dave.ross@utecsury.com)

#### **OTHER PARTIES FOR NOTICE**

Tony Gerbino  
Jeffrey Whetzel  
Grant Thornton LLP  
333 Clay Street  
Houston, TX 77002-4000  
[Tony.Gerbino@gt.com](mailto:Tony.Gerbino@gt.com)  
[Jeffrey.Whetzel@gt.com](mailto:Jeffrey.Whetzel@gt.com)

John Bittner  
Grant Thornton LLP  
1717 Main Street  
Dallas, TX 75201  
[John.Bittner@gt.com](mailto:John.Bittner@gt.com)

Southwest Bank of Texas  
Aka Amegy Bank of Texas  
PO Box 4837  
Houston, TX 77210-4837

Merrill Lynch Business Financial Services, Inc.  
222 North LaSalle Street, 17<sup>th</sup> Floor  
Chicago, IL 60601

Inspectronic Corporation  
222 E. Fordham Road  
Bronx, NY 10458-5006

National City Business Credit, Inc.  
1965 E. 6<sup>th</sup> Street  
Cleveland, OH 44114

National City Commercial Capital LLC  
995 Dalton Ave.  
Cincinnati, OH 45203

Cisco Systems Capital Corporation  
170 W Tasman Drive  
San Jose, CA 95134

Herc Exchange, LLC  
3817 Northwest Expressway  
Oklahoma City, OK 73112

Radler Enterprises, Inc.  
530 Wells Fargo Drive, Suite 300  
Houston, TX 77090

Richard A. Aguilar  
McGlinchey Stafford PLLC  
12<sup>th</sup> Floor, 601 Poydras Street  
New Orleans, LA 70130  
[raguilar@mcglinchey.com](mailto:raguilar@mcglinchey.com)  
*Attorney for PNC Bank*

Brad J. Axelrod  
McGlinchey Stafford PLLC  
301 Main St. - 14th floor  
Baton Rouge, LA 70825  
[baxelrod@mcglinchey.com](mailto:baxelrod@mcglinchey.com)

Mark L. Clark  
Brown Sims  
Poydras Center, Suite 2200  
650 Poydras Street  
New Orleans, LA 70130  
[mclark@brownsims.com](mailto:mclark@brownsims.com)

Karen A. Cooper  
Aon Risk Services Southwest, Inc./Aon Energy  
1330 Post Oak Blvd, Suite 900  
Houston, TX 77056-3089  
[Karen\\_Cooper@ars.aon.com](mailto:Karen_Cooper@ars.aon.com)

**PARTIES REQUESTING NOTICE**

Joel W. Mohrman  
Anderson L. Coa  
McGlinchey Stafford PLLC  
1001 McKinney, Suite 1500  
Houston, TX 77002  
[jmohrman@mcglinchey.com](mailto:jmohrman@mcglinchey.com)  
[acoa@mcglinchey.com](mailto:acoa@mcglinchey.com)  
*Attorney for Beauty Elite Properties, L.P.*

Ross Spence  
Snow Fogel Spence LLP  
2929 Allen Parkway, Suite 4100  
Houston, TX 77019  
[rossspence@snowfogel.com](mailto:rossspence@snowfogel.com)  
*Attorney for Michael Rentfrow*

Edward L. Rothberg  
Melissa A. Haselden  
Weycer Kaplan Pulaski & Zuber PC  
11 Greenway Plaza, Suite 1400  
Houston, TX 77046  
[erothberg@wkpz.com](mailto:erothberg@wkpz.com)  
[mhaselden@wkpz.com](mailto:mhaselden@wkpz.com)  
*Attorneys for CapRock Communications*